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In re Application of :
KAWASAKI, et al. :
U.S. Application No.: 10/559,532 : DECISION ON PETITIONS
PCT No.: PCT/JP04/08495 :
Int. Filing Date: 10 June 2004 :
Priority Date: 12 June 2003 :
Attorney Docket No.: 03500.018188.0 :
For: SHEET MATERIAL IDENTIFYING :
APPARATUS, SHEET MATERIAL TREATING :
APPARATUS AND SHEET MATERIAL :
IDENTIFYING METHOD :

This decision is in response to applicant's "Petition under 37 CFR 1.137(a) to Revive Unavoidably Abandoned Application" dated 09 September 2008. Applicant's request is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 10 June 2004, applicant filed international application PCT/JP04/08495 which claimed priority of an earlier application filed 12 June 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 20 December 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 12 December 2005.

On 02 December 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 14 March 2006, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) informing applicant that an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. Applicant was afforded two months to file the required response and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 08 January 2007, the United States Elected Office mailed a Notification of

Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification of Missing Requirements mailed 14 March 2006 within the time period set therein.

On 09 September 2008, applicants filed "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a)." Applicants state in the present petition that the applicant did not receive the Notification of Missing Requirements mailed 14 March 2006. Petitioner's statements will be treated as a petition to withdraw a holding of abandonment under 37 CFR 1.181.

DISCUSSION

The Manual of Patent Examining Procedure (MPEP) at 711.03(c) and the Official Gazette, at 1156 OG 53, provides the grounds that an Office action was not received:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm.

Applicant has provided a statement that the Form PCT/DO/EO/905 was never received, explained that a search of the file jacket and application contents revealed that the Form PCT/DO/EO/905 had not been received; and included a copy of the relevant docket record. However, applicant has not provided a statement describing the firm's docketing system and that the docketing system is sufficiently reliable. As such, it is not possible to grant applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment.

CONCLUSION

For the reasons detailed above, applicant's petition under 37 CFR 1.181 is DISMISSED.

The petition under 37 CFR 1.137(a) is **DISMISSED** as moot.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." No additional fee is required. Extensions of time under 37 CFR 1.136(a) are permitted.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459